

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

THEODORE GINNERY,)
)
Plaintiff,)
)
v.) No. 4:07CV908 CEJ
)
ALAN BLAKE,)
)
Defendant.)

MEMORANDUM AND ORDER

This matter is before the Court upon the motion of Theodore Ginnery for leave to commence this action without prepayment of the filing fee pursuant to 28 U.S.C. § 1915. Upon consideration of the financial information provided with the application, the Court finds that plaintiff is financially unable to pay any portion of the filing fee, and plaintiff will be granted leave to proceed in forma pauperis pursuant to 28 U.S.C. § 1915. Additionally, the Court has reviewed the complaint and will dismiss it pursuant to 28 U.S.C. § 1915(e)(2)(B) because it fails to state a claim upon which relief can be granted.

28 U.S.C. § 1915(e)

Pursuant to 28 U.S.C. § 1915(e)(2)(B), the Court may dismiss a complaint filed in forma pauperis if the action is frivolous, malicious, fails to state a claim upon which relief can be granted, or seeks monetary relief against a defendant who is immune from

such relief. An action is frivolous if “it lacks an arguable basis in either law or in fact.” Neitzke v. Williams, 490 U.S. 319, 328 (1989). An action fails to state a claim upon which relief can be granted if it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief. Conley v. Gibson, 355 U.S. 41, 45-46 (1957).

In reviewing a pro se complaint under § 1915(e)(2)(B), the Court must give the complaint the benefit of a liberal construction. Haines v. Kerner, 404 U.S. 519, 520 (1972). The Court must also weigh all factual allegations in favor of the plaintiff, unless the facts alleged are clearly baseless. Denton v. Hernandez, 504 U.S. 25, 32-33 (1992); Scheuer v. Rhodes, 416 U.S. 232, 236 (1974).

The Complaint

Plaintiff, a civilly committed sexually violent predator at the Missouri Sexual Offender Treatment Center (MSOTC), brings this action under 42 U.S.C. § 1983 for an alleged violation of his constitutional rights. Defendant is the Chief Operating Officer of MSOTC. Plaintiff’s sole allegation is that he is being denied access to a college education and degree program.

To state a claim under § 1983, plaintiff must establish that he has been deprived of a right secured by the Constitution or the laws of the United States. E.g., American Mfrs. Mut. Ins. Co. v. Sullivan, 526 U.S. 40, 49 (1999). The complaint fails to state

a claim under § 1983 because the civilly committed residents of MSOTC do not have a constitutional right to a college education. Consequently, the complaint shall be dismissed pursuant to 28 U.S.C. § 1915(e)(2)(B).

Accordingly,

IT IS HEREBY ORDERED that plaintiff's motion to proceed in forma pauperis [Doc. #2] is **GRANTED**.

IT IS FURTHER ORDERED that the Clerk shall not issue process or cause process to issue upon the complaint because the complaint fails to state a claim upon which relief can be granted.

An appropriate order of dismissal shall accompany this Memorandum and Order.

Dated this 30th day of May, 2007.



CAROL E. JACKSON
UNITED STATES DISTRICT JUDGE